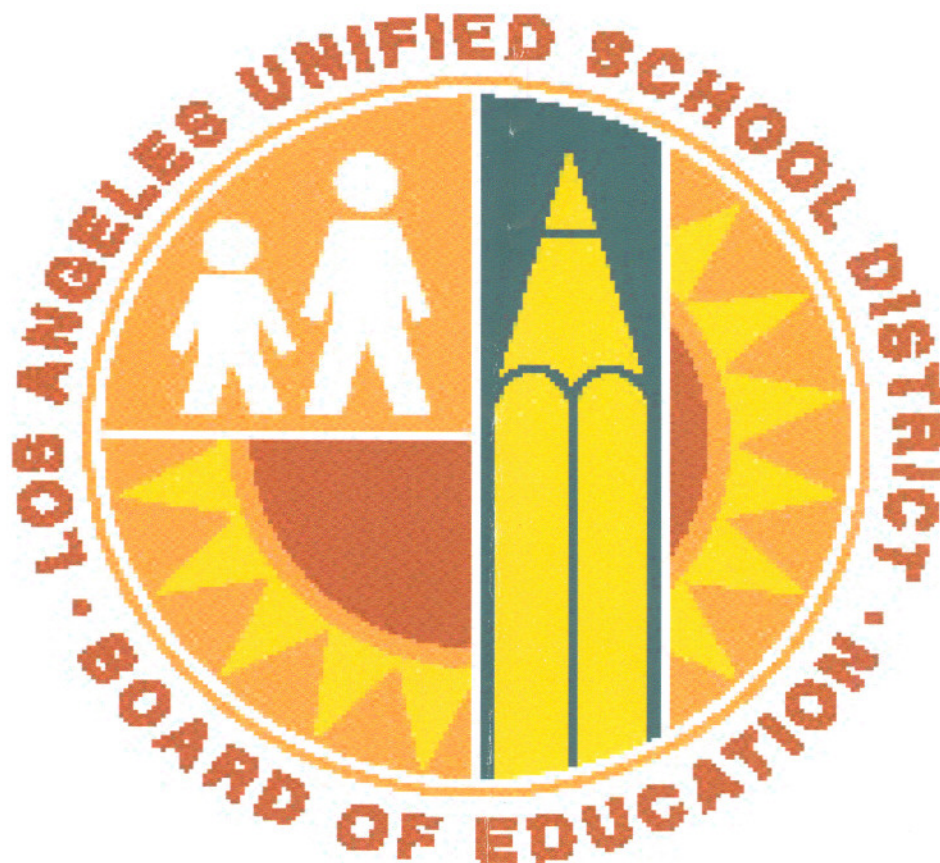


LOS ANGELES UNIFIED SCHOOL DISTRICT



OFFICE OF THE GENERAL COUNSEL

Top Ten Recommended Legislative Changes (With Proposed Language) Regarding Certificated Employee Procedures

Top 10 Recommended Changes for Education Code Reform **(Procedures Related to Certificated Employees)**

The following sets forth recommended legislative changes in priority order, grouped by subject matter. While each of these areas is in need of urgent reform, the most pressing at this time are the first two categories because they deal with upcoming deadlines. Corresponding revisions/additions to current statutory language are attached hereto.

Evaluation/Election for Tenure

1. Amend Education Code Section 44929.21 to allow districts the option of extending the probationary period from two to three or four years. Alternatively, extend the probationary period for one year in cases where a decision regarding tenure is a close call or cannot be reached because of extenuating circumstances (e.g. employee has been on paid leave).
2. Amend Education Code Section 44929.21 to permit non-reelections after March 15 of the second (or third) year.

Reduction in Force

3. Amend Education Code Section 44955 to permit school districts to: (1) skip employees with positive evaluations so that a school district may reduce those with below standard evaluations first; (2) break seniority "ties" in the district's discretion, including on the basis of performance; and (3) skip teachers at certain underserved school sites in order to attract more qualified teachers to low-performing schools. (Amend Education Code Section 44956 to allow "reemployment" provisions to track these amendments as well.)
4. Amend Education Code Section 44949 to eliminate any need for a hearing. This would bring the certificated process into conformity with the classified reduction in force process, and layoff process for virtually all other public employees.

Dismissal

5. Amend Education Code Section 44944 to eliminate or improve the Commission on Professional Competence panel:
 - a. Amend Education Code Section 44944 to eliminate the CPC panel, and utilize only an administrative law judge ("ALJ") for dismissal hearings, as is done in the Community College Districts.
 - b. Make the decision of the ALJ *advisory*, allowing the Board of Education to exercise ultimate discretion regarding certificated dismissals.

- c. If the panel cannot be eliminated entirely, then allow parents or taxpayers to serve on the panel to balance the interest of the employee-appointed panel member.
 - d. Finally, if the panel continues with educator appointments only, then 1) eliminate the "5 years in the discipline within the last 10 years" requirement and 2) clarify that retired teachers or administrators can receive pay for their service so long as pay does not exceed what they would have earned if still employed.
- 6. Amend Education Code Section 44944 to permit districts to implement dismissal of certificated employees after pre-disciplinary due process ("Skelly hearing") and once the Board of Education takes action, with no continuance of pay. As with classified employees and virtually all other public employees, certificated employees may be awarded back pay, etc. if they prevail at the CPC hearing or in court.
- 7. Amend Education Code Section 44932 to allow two consecutive unsatisfactory performance evaluations to constitute unsatisfactory performance for the purpose of dismissing a permanent certificated employee. If negotiated with the exclusive representative, employees can utilize the contractual grievance procedure to address procedural issues pertaining to the evaluation as they arise, although not the content of the evaluation. Once two consecutive evaluations are final, however, districts should be able to establish cause for dismissal without the need for further evidentiary hearing on the substance of the evaluations.
- 8. Reduce delays caused by notice periods/moratorium. Amend Education Code Section 44938 to eliminate the 45/90 day notice requirements for unprofessional conduct/failure to follow rules and unsatisfactory service. Clarify that the summer moratorium on dismissal notices set forth in Section 44944 applies only if the teacher is not on track (in an active teaching assignment) at the time. (Note: eliminating panels will help reduce delays.)
- 9. Amend Education Code Section 44944 to allow evidence dated more than four years prior to the date of the filing of the notice of intention to dismiss by the Board of Education to be presented.
- 10. Amend Education Code Section 44944 to revoke/clarify that Morrison factors do not apply in teacher dismissal hearings. The case arose out of a credential revocation hearing and has been applied in too formulaic a manner to produce sensible or consistent results in performance cases.